IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1733 OF 1987

The Board of Trustees of the Port of Bombay .. Plaintiffs.

V/s.

M/s.Darabshaw B. Cursetjee's Sons Pvt. Ltd. .. Defendant.

Shri.N.H.Manjee i/b.Mulla & Mulla for the plaintiffs.

CORAM : Dr.D.Y.CHANDRACHUD, J.

DATED : 23rd November, 2006.

P.C.

1. The suit has been instituted by the Board of Trustees of the Port of Bombay for the recovery of an amount of Rs.5,11,040.86 from the defendants together with interest thereon @18% per annum or at such other rate as this Court may deem fit and proper from the date of the suit till payment or realization and for costs of the suit. No Written Statement has been filed by the defendants. The suit was accordingly permitted to proceed for want of Written Statement. The plaintiffs in accordance with the directions issued by the Court on

13/07/2006 filed the original documents and an affidavit of their Administrative Officer in the office of the Chief Mechanical Engineer in lieu of the examination-in-chief.

2. The defendants carry on business as Stevedores. On 20th December, 1983, the vessel m.v.'MARIYAM BEAUTY' took berth at No.7 Victoria Docks and commenced discharging its cargo on 29th December, 1983. On the request of the defendants, the plaintiff allotted Hydraulic Crane No.58 for unloading the cargo from the vessel. In the process of discharging the cargo, the Hydraulic Crane toppled on board the said vessel crushing the crane driver's cabin and the crane driver died as a result. Two other employees of the Dock Labour Board had also received severe injuries. The cause of accident was investigated by the surveyor, who was appointed to survey the damage on behalf of the plaintiffs. The Surveyor prepared his report on 20th November, 1985. The plaintiffs claim that since Crane No.58 was working under the directions of the Hatch Foreman of the Defendants and the Stevedores Foreman whilst discharging the cargo,

the defendants are liable to pay the cost and damages. The defendants denied their liability by a letter dated 3rd January, 1984. The plaintiffs have claimed the following amounts:-

1.	Being the amount for dismantling and removal of the damaged crane	Rs. 13,427.86
2.	Hire charges for fork lift, mobile crane and Tata P & H crane	Rs. 76,131.00
3.	Cost of repairs of Hydraulic crane No.58.	Rs.4,60,000.00
4.	Being the amount of compensation paid to the crane driver by Plaintiff.	Rs. 30,000.00
		Rs.5,11,040.86

(Rupees Five lakh eleven thousand forty and paise eighty six only).

No Written Statement having been filed by the defendant, the claim of the plaintiff will have to be regarded as duly proved on the basis of the affidavit which is tendered and taken on record in lieu of the examination-in-chief and the compilation of documents that is produced on record. The suit is accordingly decreed in terms of prayer clause (a) but with the modification that

the plaintiffs would be entitled to interest @9% per annum from the date of the suit till payment or realization and to the costs of the suit.

(Dr.D.Y.CHANDRACHUD, J.)